BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ALFRED L. YOUNG
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-462
Case No. 87-11021

SSA No.

Office of Appeals No. OAK-20730-0001-A

The claimant appealed from those portions of the decision of the administrative law judge which held that the claimant was ineligible to receive unemployment insurance benefits under section 1253(c) of the Unemployment Insurance Code for the three-week period between January 25 and February 14, 1987; that the claimant was disqualified from receiving benefits under section 1257(a) of the code beginning April 5, 1987, and continuing thereafter for each of six weeks in which he was otherwise eligible to receive benefits; that the claimant had been overpaid $498 in benefits under section 1375 of the code and was liable for repayment of that amount; and that the claimant was subject to a penalty assessment of $149.40 under section 1375.1 of the code.

STATEMENT OF FACTS

The claimant originally opened his unemployment insurance claim effective March 9, 1986. His weekly benefit award was determined to be $166, on a maximum benefit award of $4316, payable out over 26 weeks.

For a ten-year period preceding the filing of his unemployment insurance claim the claimant had worked as the supply manager for two different banks, one with one hundred branch offices. He described his usual and customary occupation as a truck driver and a loader/unloader, and his position as a supply manager included those duties. On the basis of certifications to the unemployment insurance office that he was, among other things, available and able to work, he was paid at least twenty-three weeks of benefits up through February 14, 1987, including full benefits for the weeks ending January 31, February 7, and February 14.

On or about July 7, 1986, the claimant's back, neck, and shoulder were injured when he was pinned by a load of twenty heavy glass patio doors. The claimant sought treatment from a physician, who advised him that his injuries would heal effectively if he did not do any heavy lifting in his customary occupation, but that he could still work if he investigated other occupations that involved nothing more than light lifting.

When he opened his unemployment claim the claimant already possessed several classes of vehicle operator's licenses, including some types of licenses for the operation of passenger buses. He began seeking some light delivery jobs such as working for an express package service, but found the market tight because of competition for the position. He also performed services after his injury for some companies associated with the trucking industry. The effects of his injury still continued to bother him, and he lost one brief job because of his physical limitations. There is no evidence in the record to contradict or refute the claimant's contention that he was actively involved in finding work in an available labor market.

On December 10, 1986 the claimant signed a state disability application indicating that his disability had begun on July 8, 1986, and acknowledging that he had recently filed for or received unemployment insurance benefits. His treating physicians signed the same form on January 23, 1987, certifying to the July 7 injury and fixing the probable date of release to return to work as March 9, 1987.

On February 7, 1987, and again on February 15, 1987, the claimant signed unemployment insurance continued claim forms stating that he was physically able to work full time each of the seven days of the weeks ending January 31, February 7, and February 14, and that for those weeks there was no other reason why he could not have worked full time. During this period he applied for an additional form of bus operator's license and investigated positions doing light warehouse work or driving a forklift.

The claimant was not sure that his disability insurance application would be treated favorably by the disability office and did not know when his doctor submitted the form to the disability office. The disability form, signed by the claimant, contained the statement that the first day he was too sick to perform all of the duties of his regular and customary work was July 8, 1986.

The claimant consistently maintained, in his interview with the Department, in his appeal to the administrative law judge, and

in his testimony at the hearing, that his statements to the unemployment insurance office were truthful, because he was actively seeking work and available for work, and that his statements to the disability insurance office were also truthful, because he was not able to perform all of the duties of his regular or customary occupation.

The disability office on February 26 sent the claimant his first check for $992, covering the thirty-one-day period between January 25 and February 24. Therefore, the claimant was paid benefits by both agencies for the twenty-one-day period between January 25 and February 14.

REASONS FOR DECISION

Section 1253(c) of the California Unemployment Insurance Code provides that a claimant is eligible to receive benefits with respect to any week only if the claimant "was able to work and available for work for that week".

The California Supreme Court, in Sanchez v. Unemployment Insurance Appeals Board (1977), 20 Cal. 3d 55; 141 Cal. Rptr. 146, defined "availability":

> "Availability for work within the meaning of Section 1253(c) requires no more than (1) that an individual claimant be willing to accept suitable work which he has no good cause for refusing and (2) that the claimant thereby make himself available to a substantial field of employment."

If the claimant satisfied the first requirement the burden shifts to the Department as to the second.

In Appeals Board Decision No. P-B-459, the Board held that an unavoidable nonavailability for one day of a week satisfied the "good cause" test under Sanchez, and that the Department had not otherwise met its burden of establishing that there was not still a substantial field of employment available to the claimant.

The matter involving the claim now before us has heretofore been decided on the premise that a claim for unemployment insurance benefits based on availability for and ability to work for a given period is necessarily contradicted by a claim for disability insurance benefits based on inability to perform work in one's usual occupation for that same period. This premise is faulty.

A disability insurance claimant certifies only that he or she is unable to perform the duties of his or her regular or customary work, not that the claimant is unable to perform any duties in any kind of work or that the claimant is disabled for all kinds of work. Similarly, an unemployment insurance claimant provides a comparable type of certification that he or she is able to work and available for work full time. Given the definition of work availability in Sanchez, a claim for one form of benefits is not necessarily mutually exclusive of a claim for the other. We do not think that the two claims by this claimant are mutually exclusive in this case.

The Appeals Board has factored physical restrictions into a finding of availability for work in some of its earlier decisions. In Appeals Board Decision No. P-B-172, the Appeals Board considered the case of a claimant who was limited to a maximum of five hours of work per day by her physician because of a tubercular condition and the subsequent removal of some ribs to effect the permanent collapse of one lung. The record demonstrated that a reasonable job market still existed for the claimant even with her medical restrictions. The Board held in that case that the claimant was ready, willing, and able to accept suitable employment which she had no good cause to refuse, and that she was available for work within the meaning of the code.

Part of our position that applications for both unemployment and disability benefit assistance are not inimical to each other is grounded in an understanding that each benefit program is part of a larger system designed to provide financial help to certain workers. The programs do not need to compete, to clash, or to cancel each other out.

> "The statutes here under examination are part of a comprehensive, integrated program of social insurance which, operating in their respective spheres, are calculated to alleviate the burden of a loss of wages by a protected employee during a particular period of time. The contingencies foreseen are loss of wages through (1) involuntary unemployment; (2) industrially caused disability; and (3) disability of a nonoccupational nature. The significant aspect of this legislation concerns the fact that wages have been lost; the cause of such wage loss is the touchstone which determines which category of remedial legislation is germane. The Workmen's [now Workers'] Compensation Act, which mitigates the hardships experienced where a worker is injured in the course of his employment, the Unemployment Insurance Act [now Code], which provides benefits to one unemployed because of lack of work, and the unemployment compensation disability insurance program,

> which protects the worker against nonoccupational disability, though distinct, are all component elements of a general, coordinated plan of social insurance developed by the Legislature. . . ." California Compensation Insurance Company v. Industrial Accident Commission and Badge Moore (1954), 128 CA2d 797, 806, 276 P.2d 148.

Section 1255.5 makes an individual ineligible for both temporary disability and unemployment compensation benefits at the same time. Section 2629 provides that an individual is not eligible to receive disability insurance benefits for the same days and to the same extent that the individual is eligible for temporary disability indemnity under the workers' compensation program. And section 2628 provides as follows:

> "An individual is not eligible for disability benefits with respect to any period for which the director finds that he has received or is entitled to receive unemployment compensation benefits under Part I of this division or under an unemployment compensation act of any other state or of the Federal Government."

In our view, these programs are intended to complement each other. An individual can in certain cases supplement the benefits under one program with those from another.

The claimant in this matter had his own physician's instruction that he could no longer do his customary lifting, but that he could still seek out other less strenuous types of work without medical jeopardy. The claimant did so, even during the period when he was claiming and being paid benefits from both agencies. The claimant had good cause to restrict his availability from the type of heavy lifting he had done before his injury. However, he remained available to a substantial field of employment, and the Department has not established otherwise. We therefore find that the claimant was not ineligible to receive benefits under section 1253(c) of the code.

We are aware that some unemployment-disability overlaps involve clearly inconsistent allegations of eligibility for benefits, and that a claim for unemployment insurance benefits during a period of hospitalization or extended convalescence, for example, is distinguishable from the one before us. However, the mere fact that the claimant has qualified for unemployment compensation disability benefits does not automatically establish that the claimant is unable to or unavailable for work.

Section 1257(a), Unemployment Insurance Code, provides an individual is disqualified for benefits if the individual wilfully made a false statement or representation, with actual knowledge of the falsity thereof, or wilfully failed to report a material fact to obtain unemployment benefits.

Section 1375, Unemployment Insurance Code, provides that a claimant overpaid benefits is liable for repayment unless the overpayment was not due to fraud, misrepresentation or wilful nondisclosure, and was received without fault, and recovery would be against equity and good conscience.

Section 1375.1 of the code provides that if a claimant was overpaid benefits because the claimant wilfully made a false statement with actual knowledge thereof or withheld a material fact, the director shall assess against the claimant an amount equal to 30% of the overpayment amount.

From the foregoing reasoning we are unable to conclude that the claimant made any false statement of any kind when he claimed benefits for the weeks at issue. However, we do herein recognize the duty of the claimant to keep the Departmental personnel administering the unemployment compensation program fully apprised of his or her physical condition, as the claimant did in this case.

It follows that the claimant was entitled to be paid the unemployment compensation benefits that he received, and that no penalty assessment is appropriate. The effect of our decision on the claimant's disability claim, under section 2628 of the code or otherwise, is left to the disability office to determine.

DECISION

The appealed portions of the decision of the administrative law judge are reversed. The claimant is not ineligible to receive unemployment benefits under section 1253(c) of the code for the three weeks at issue. The claimant is not disqualified from receiving benefits under section 1257(a) of the code. The claimant was not overpaid unemployment benefits and is not subject to a penalty assessment.

Sacramento, California, April 21, 1988.

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